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Message Text

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ACTION EB-08

INFO OCT-01 AF-10 EUR-12 ISO-00 CIAE-00 COME-00
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R 131749Z JUN 78
FM AMEMBASSY LONDON
TO SECSTATE WASHDC 7098
INFO AMEMBASSY PARIS
AMEMBASSY BRUSSELS
AMEMBASSY MONROVIA

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DEPT PASS TO DOT AND COAST GUARD
AMEMBASSY PARIS ALSO FOR USOECD
AMEMBASSY BRUSSELS FOR USEEC

E. O. 11652: N/A
TAGS: EWWT, PORG, IMCO
SUBJECT: IMCO: 36TH SESSION OF THE LEGAL COMMITTEE
JUNE 5-9, 1978

REF: LONDON 8794

1. SUMMARY: THE 36TH SESSION OF THE LEGAL COMMITTEE WAS ORIGINALLY SCHEDULED TO SPEND ITS ENTIRE TIME CONSIDERING A NEW CONVENTION ON LIABILITY AND COMPENSATION IN CONNECTION WITH THE CARRIAGE OF NOXIOUS AND HAZARDOUS SUBSTANCES BY SEA. HOWEVER, ONE DAY (TUESDAY, JUNE 6) WAS SPENT CONSIDERING THE REPORT ON THE AMOCO CADIZ DISCUSSIONS HELD DURING THE PRECEDING WEEK (REFTEL) AND THE "TERMS OF REFERENCE" FOR THE SECRETARIAT STUDY ON THE MATTER. THE WORK ON THE NEW CONVENTION FOCUSED ON
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THE ISSUE OF WHO SHOULD BE LIABLE FOR THE DAMAGE: THE SHIPPER (CARGO INTEREST), THE SHIPOWNER, OR A COMBINATION OF BOTH. THE SWEDISH AND DUTCH HAD PROPOSED MAKING THE CARGO INTEREST LIABLE AND PRODUCED A PAPER TO THAT EFFECT. DEBATE IN PLENARY ELICITED VARYING SUPPORT FOR EACH SYSTEM AND IT WAS DECIDED THAT A WORKING GROUP SHOULD DRAFT ARTICLES

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ON WHO SHOULD BE THE PARTY LIABLE, WHICH WOULD BE CONSIDERED AT THE 37TH SESSION (NOVEMBER 20-24).
END SUMMARY.

2. THE DRAFT "TERMS OF REFERENCE"FOR THE SECRETARIAT STUDY CONCERNING LEGAL PROBLEMS ARISING OUT OF AMOCO CADIZ IN RELATION TO REPORTING, NOTIFICATION, INTERVENTION, SALVAGE, AND ASSISTANCE WERE ACCEPTED BY THE FULL COMMITTEE WITH SOME MINOR MODIFICATIONS. THE PRINCIPAL MODIFICATION WAS THAT THE STUDY IS TO CONSIDER HAZARDS OTHER THAN POLLUTION (E.G., EXPLOSION, FIRE) ONLY IF THERE IS SUFFICIENT TIME. THE TEXT OF THE FINAL "TERMS OF REFERENCE" WAS SLIGHTLY MODIFIED FROM THAT REPORTED REFTEL IN PARAS (1), (4), AND (5). THE CHANGED PORTIONS ARE AS FOLLOWS:

"(1) WHAT POWERS ARE CURRENTLY AVAILABLE TO COASTAL STATES TO TAKE MEASURES TO DEAL WITH POLLUTION (OR OTHER MARINE HAZARDS IF TIME PERMITS) OR THE THREAT THEREOF AFFECTING THEIR INTERESTS, WITH PARTICULAR REFERENCE TO:

"(4) THE EXTENT TO WHICH THE INTERNATIONAL REGIME OF SALVAGE AND ASSISTANCE COULD BE MODIFIED OR EXTENDED, SUBJECT TO APPROPRIATE SAFEGUARDS, TO TAKE ACCOUNT OF THE RIGHTS AND INTERESTS OF THIRD PARTIES WHO MAY BE CON-

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CERNED WITH OR AFFECTED BY THE POSSIBLE CONSEQUENCES OF MEASURES TAKEN BY THE COASTAL STATE DURING SALVAGE AND ASSISTANCE OPERATIONS WITH A VIEW TO PRESERVATION OF THE ENVIRONMENT.

"(5) THE TRENDS DEVELOPING AT THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA IN THE RELEVANT PROVISIONS OF THE ICNT AND THE RELEVANCE OF THESE PROVISIONS FOR THE FURTHER WORK TO BE UNDERTAKEN BY THE LEGAL COMMITTEE."

AS PREVIOUSLY NOTED IN THE REPORT OF THE 35TH SESSION, SOME DELEGATIONS (U.S., CANADA) ARE CONCERNED ABOUT WHAT THE REPORT WILL CONTAIN AND WHAT STATUS IT MAY HAVE IN INTERNATIONAL LAW, SINCE IT WILL BE THE PRODUCT OF A RECOGNIZED INTERNATIONAL BODY. THE SECRETARIAT SOLICITED INPUT TO THE STUDY FROM INTERESTED DELEGATIONS, EITHER "FORMAL" OR "INFORMAL". IN CORRIDOR, FRENCH DELEGATE (DOUAY) REVEALED TO U.S. DELEGATE THAT HE AND REPRESENTATIVES OF U.K. AND FRG INTENDED TO MEET WITH SECRETARIAT ON JULY 11 AND 12, 1978 TO DISCUSS THE STUDY'S PROGRESS. HE INDICATED HIS

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DESIRE THAT THE U.S. PARTICIPATE AT THIS MEETING.

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3. DURING DISCUSSIONS ON "TERMS OF REFERENCE" OF THE STUDY, MANY DELEGATIONS REFERRED TO THE LAW OF THE SEA (LOS) NEGOTIATIONS AND THE REPORT OF THE THIRD COMMITTEE OF THE UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, IN PARTICULAR, ARTICLE 222 OF THE INFORMAL COMPOSITE NEGOTIATING TEXT (ICNT). THIS INTEREST IS REFLECTED IN PARAGRAPH (5) OF THE"TERMS OF REFERENCE", REQUIRING THE STUDY TO MAKE REFERENCE TO DEVELOPING TRENDS AT THE LOS NEGOTIATIONS.

4. THE COMMITTEE'S DISCUSSIONS ON THE NEW CONVENTION ON LIABILITY AND COMPENSATION FOR HAZARDOUS SUBSTANCES FOCUSED ON TWO MAIN ISSUES: A POSSIBILITY FOR A FUND AND WHO WOULD BE THE PARTY LIABLE. WHILE NO DECISIONS WERE MADE, IT APPEARS CLEAR THAT ANY NEW SYSTEM WILL BE BASED ON SOME FORM OF STRICT LIABILITY WITH APPROPRIATE LIMITATIONS
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(CATASTROPHE LIMITS).

5. MANY DELEGATIONS FAVORED COMPENSATION FOR DAMAGE BY MEANS OF A FUND AS THE MOST DESIRABLE SOLUTION, PARTICULARLY FROM THE VIEWPOINT OF THE VICTIM. HOWEVER, IT WAS FELT THAT A NUMBER OF PRACTICAL DIFFICULTIES SEEMED TO MAKE A FUND AN UNREALISTIC PROPOSITION. IN VIEW OF THE DIVERSITY OF SUBSTANCES AND INDUSTRIES TO BE COVERED, IT WOULD BE DIFFICULT TO ESTABLISH AND MAINTAIN A FUND. THE DELEGATE OF POLAND SUGGESTED A SYSTEM OF ADDITIONAL FREIGHT RATES ON THE COVERED SUBSTANCES BUT FAILED TO ELABORATE ON THE ADMINISTRATION OF SUCH A SYSTEM. THE COMMITTEE AGREED THAT, AT THIS STAGE AND IN LIGHT OF THE PAUCITY OF INFORMATION AVAILABLE TO IT, IT WOULD BE IMPRACTICAL TO MAKE ANY DECISION ON A FUND AS FORMING PART OF THE NEW CONVENTION.

6. THE NETHERLANDS AND SWEDISH DELEGATIONS JOINTLY SUBMITTED A PAPER OUTLINING A SYSTEM WHEREIN THE SHIPPER WAS WHOLLY LIABLE AND WAS REQUIRED TO CARRY INSURANCE. THE SHIPOWNER WOULD BE LIABLE ONLY WHEN HE FAILED TO INSURE THAT SHIPPER HAD THE COMPULSORY INSURANCE; THE IDEA BEING TO INSURE RECOVERY TO THE VICTIM AND TO ENCOURAGE THE SHIPOWNER TO MAKE CERTAIN THE SHIPPER CARRIED THE NECESSARY INSURANCE.

7. THE FRENCH DELEGATION FAVORED PUTTING TOTAL LIABILITY ON THE SHIPOWNER BUT TO HIGHER LIMITS THAN IN THE 1976 LIMITATION OF LIABILITY CONVENTION. THEY STRONGLY OPPOSED HOLDING ONLY
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THE CARGO INTEREST LIABLE. THE DISCUSSION THEN SETTLED UPON A COMBINED SYSTEM WHICH WOULD HOLD THE SHIPOWNER LIABLE TO A FIRST LEVEL AMOUNT AND THEN THE SHIPPER LIABLE BEYOND THAT AMOUNT TO A HIGHER LIMIT. THE COMMITTEE DECIDED AT THAT POINT TO SET UP AN INFORMAL WORKING GROUP TO DRAFT ARTICLES ALONG THE LINES OF A COMBINED SYSTEM, TO BE USED AS A DISCUSSION VEHICLE AT THE 37TH SESSION IN NOVEMBER.

8. THE WORKING GROUP, CONSISTING OF DELEGATES

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FROM SWEDEN, NETHERLANDS, GDR, FRG, GREECE, AND THE U.S. MET ON JUNE 8, 1978 AND DRAFTED A PLAN OF WORK. IN VIEW OF THE COMPLEXITY OF THE ISSUES UNDER CONSIDERATION, IT WAS DECIDED THAT THE GROUP SHOULD MEET, INTERSESSIONALLY, ON OCTOBER 2-4, 1978 IN LONDON AT IMCO.

9. THE 37TH SESSION WILL SPEND APPROXIMATELY TWO DAYS ON AMOCO CADIZ MATTERS AND TWO DAYS ON THE NEW CONVENTION. ADDITIONALLY, THERE ARE PLANS TO DISCUSS A REMIT FROM COUNCIL CONCERNING THE APPROPRIATE DEFINITION OF "OWNER" FOR USE IN THE NUCLEAR SHIP CODE. THIS MATTER AROSE INITIALLY IN THE WORK OF THE MARITIME SAFETY COMMITTEE AND ITS SUBCOMMITTEE ON SHIP DESIGN AND EQUIPMENT.

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